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A CANDID  
EXAMINATION

OF THE  
RESOLUTIONS and SENTENCE

OF THE  
COURT-MARTIAL

On the TRIAL of

ADMIRAL BYNG;

As founded on the Principles of *Law*,  
*Evidence*, and *Discipline*.

In a Letter to the Gentlemen of the NAVY.

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*Summum Jus, Summa Injuria. CICERO.*

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*By an OLD SEA OFFICER.*

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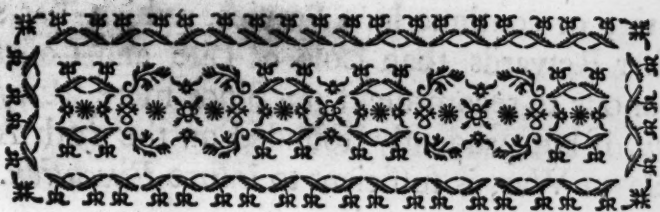
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A CANDID  
EXAMINATION, &c.

GENTLEMEN,

I Am an *old Officer*, having served upwards of forty Years in the Navy; but how many *such* there are like to be for the future, a *late Sentence* may serve to determine; since, whoever shall be lucky enough to escape the Broad-sides of the Enemy, must now, according to the modern Interpretation of *our Law*, be exposed to a still more dangerous Artillery; inso-much, that a violent Death, either *abroad* or at *home*, seems to be the only melancholy Alternative

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native left those, who shall be rash enough to enter, or continue in a Service, which has no other Rewards than Loss of Life and Loss of Honour to recommend it: Since mere *Accusation*, if but prudently founded on the 12th Article of War, is sufficient to insure *Execution*.

I remember, that Court-Martials in my younger Days were held to be Courts of *Honour* and *Conscience*; and, by these Rules only, was the Conduct of our Commanders to be tried.—Our *naval Judges* were then indeed unskilled in the Niceties of *Special Pleading*, and were determined rather by the plain Merits of the Case, than the dubious Phraseology of the Statute; if the Party appeared innocent in point of Fact, they never dreamt of pronouncing him guilty in point of Law; and could not reconcile to themselves, the injurious Absurdity of inflicting the Penalty of *Guilt* upon *Innocence*, because the inexplicit Penning of an Article might seem to render both equally obnoxious to it.—If Necessity required some Latitude to be taken, they thought themselves at liberty, rather to make free with the Letter of the Law, than the Life of the Subject; especially, where the rigid Interpretation of the former must include a kind of legal Murder, with respect to the latter.—Hence, all Apologies for the *Sake of their own Consciences*, and Remonstrances of *Injustice done the Prisoner*, were, at that Time both unnecessary and unknown; nor were they held to be



be less *conscientious* Judges, for not being more *scrupulous* Lawyers.

I little thought of living to see the Day, when *Omniscience* should be expected as a necessary Qualification in a *Sea-Officer*; necessary, not only to the Security of his Fortune and Reputation; but even of his Life itself; for if *Error in Judgment* is to be held capital, I may venture to affirm, that few Officers will be able long to outlive the Date of their Commissions; unless *Infallibility* could be communicated with their *Instructions*; a Preservative I would have recommended to the previous Consideration of those who have so lately submitted their Consciences to the Yoke of so depopulating a Doctrine.

However, it must be confessed, this modern Doctrine of *murdering for Mistake*, may possibly be attended with one Advantage at least; for as it is probable, no naval Commander can survive more than one Expedition, the great Expence of *Superannuation* will thereby be saved to the Government; and, indeed, the annual Supplies for the Service of the Navy in a great Measure annihilated, from the Scarcity of Officers that will be found so prodigal of their Life and Honour, as to engage in a Service rendered so unavoidably destructive to both.

You will easily perceive, that these Reflections proceed from the Determination of a *late*

*Court-Martial*; a Determination, which has not only alarmed the Public in general, but laid the very Judges themselves under the inconsistent Necessity of disclaiming the Equity of their own Sentence; and imploring, for *the Sake of their own Consciences*, as well as in *Justice to the Prisoner*, that the very Execution may be averted, which their own Resolutions had authorized.—Strange Paradox of naval Judicature !

But, it seems those Gentlemen were betrayed into this Violence on their Conscience, by the limited Restriction of the Word NEGLIGENCE in the 12th Article of War ; yet how is it possible the Penalty of *Negligence* should affect *Error in Judgment* (the only Point pretended to be proved in this Case) ; are these by any Construction to be made synonymous Terms, or can *wilful Omission* and *mistaken Apprehension* include the same Idea, or deserve the same Punishment.—If then, by the whole Tenor of the Evidence, as well as by the very Resolutions of the Court themselves, it appears, that MR. BYNG could only have erred in point of Judgment ; by what Rule in *Law, Equity, or Grammar*, his Judges could think themselves obliged to find him guilty under the penal Article of *Negligence*, I am not learned enough to discover.

Yet, surely these literal Interpreters of our martial Statutes, who think themselves bound  
to

to so critical an Observance of the *mere Word*, ought at least to be as critically exact, in not mistaking the Meaning of *it*—Had this been the Case, I may, without any Offence, suppose, that *erroneous Judgment* would never have been held, to fall within the Intendment of *penal Negligence*, and that consequently MR. BYNG'S Condemnation seems to be as little consonant to the *Letter* of the *Law*, as it seems to have been to the *Conscience* of the *Court*.

After the whole Art of *State-Necromancy* had been exhausted, in conjuring up alarming Spectres of *Cowardice*, *Treachery*, and *Treason*, to see them all vanish at last, in a *disputable Point of Discipline* only, must afford Matter of Amazement ; but to see these very tricking Magicians still triumph, in having imposed on the Credulous, and secured their *destined Prey* in the word-catching Spell of a *legal Quibble*, cannot fail of exciting, at once, the Pity, and Indignation of a deluded People.

A Law, when either artfully or inadvertently penned, may become a Snare to the Innocent ; and I have been informed, that this very Word *Negligence*, when debated in Parliament, was proposed to be entirely left out of the Article, as being of no Significance ; but what Use might on a proper Occasion be made of it, those best foresaw, who were so strenuous for its standing as a Part of the Law, under a Pretence, that it  
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could never be construed in any other Sense, than such a Neglect as *implied* either *Cowardice* or *Disaffection*—How mistaken these Gentlemen were in their Opinion, or how successful in their Policy, Experience has now evinced; since we find Bravery and Loyalty are by no means sufficient Securities for the Life and Honour of an Officer, when any political Interests come in Competition with them.—How then is the Penetration, and public Virtue of that noble Earl to be admired, who so remarkably distinguished himself by his Zeal and Abilities, in opposing this Article, as it now stands; and have we not reason to think him almost endued with a Spirit of Prophecy, when he declared it to be *written with a Pen dipped in Blood*.

Not to be wiser than Providence has ordained, nay, not to think in the same Manner with the Court that tries you, has now the Sanction of Precedent to inflict the most capital of all Punishments; and yet, whether the Admiral's Judgment, or that of the Court, in this Case, partakes most of Error, may still be a Matter of Speculation, and which the following candid Examination of the Resolutions, on which the Sentence is founded, is meant to elucidate.

Thus far, I will presume to say, that let the Question be put—*Whether they thought, that*  
Mr.



Mr. BYNG, *throughout the whole Expedition, acted according to the best of his Judgment*——persuaded I am, every Individual of his Judges would answer in the Affirmative; and yet incredible to tell,——the Naval Law, it seems, denounces *Death* for it.——Had not the Admiral acted according to the Dictates of his Judgment, he must have stood condemned by *Himself*; having done it, he now stands condemned by his *Country*——Hard Alternative! that includes either Forfeiture of Life, or Violation of Conscience.

But upon this modern Principle of condemning for *Points of Judgment*, let us suppose Mr. BYNG to have judged differently from what he did, and acted accordingly; Might not the Court have done the like, by which means, 'tis possible, he might have been convicted for *doing* those very Things which he is now doomed to Death for having left *undone*; so that a mere Similitude of Thinking, between the Judges and the Prisoner, is to be the only precarious Standard of Justification.

It may not be improper to observe, that the 12th Article of War, after the Words—*or shall not do his Utmost to take or destroy every Ship*——adds—*which it shall be his DUTY to engage, &c.*——Do not these latter Words imply a Reference to the *Discretion*, as well as an Injunction on the *Valour*, of the Commander?  
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Must not his own Ideas of Prudence and Discipline, in many Circumstances, determine that *Duty*? And, though these should apparently proceed neither from *Cowardice*, *Negligence*, or *Disaffection*, yet, unluckily, differ from those entertained by his Judges on the Occasion—Shall this alone be sufficient Cause of Condemnation? As well may a Prisoner suffer Death for varying in point of *Feature* from the President.

The following Remarks on the Resolutions themselves, compared with the *Evidence* given on the Trial, will best serve to justify these Observations, and discover

*First*, Whether the Facts presumed against the Admiral, can, by any proper *legal* Construction, fall within the Description of the Word NEGLIGENCE?

*Secondly*, Whether if they proceeded from *Error* in *Judgment* only, it ought not rather to be imputed to the Lot of human *Frailty*, than *Guilt*?

*Thirdly*, Whether even any *erroneous Judgment* or *criminal Behaviour*, throughout the whole Course of the Expedition, can, with any Propriety or Justice, be inferred against the Commander *at all*?

## R E S O L U T I O N S.

## I.

*Unanimously.* **I**T does not appear, that any unnecessary Delay was made by Admiral Byng, in the Proceedings of the Squadron under his Command, from the Time of their sailing from St. Hellens, on the 6th of April, to the Time of their Arrival off *Minorca* on the 19th of May.

*Tho' the Crime of Delay was as roundly asserted, and as loudly clamoured against, as any other Part of MR. BYNG's Conduct, during the Expedition; yet his Innocence in this Point, is now established by an Authority, which, I believe, no one will suspect of any partial Impressions in favour of the Admiral.*

## II.

*Unanimously.*—It appears, that upon the Fleet's getting Sight of *Minorca*, on the Morning of the 19th of May, the Admiral detached three Frigates (the *Phoenix*, *Chesterfield*, and *Dolphin*) a-head, with Orders to Captain *Hervey* of the *Phoenix*, to endeavour to land a Letter from the Admiral to Lieutenant-General *Blakeney*, and to make Observations of what Batteries or Forts the Enemy might be possessed of along the Shore.

## III.

*Unanimously.*—It appears, that those Frigates were got a-head of the Fleet, and in Shore; and the *Phoenix* close to the Lair of *Makon*; and were

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endeavouring to execute those Orders, till they were called off, between Eleven and Twelve o' Clock, by Signal from the Admiral, upon Discovery of the *French* Fleet in the South-East Quarter.

IV.

*Unanimously.* — It appears, that the Fleet stood towards the Enemy the remaining Part of the Day, with Calms and little Winds, till they tacked in the Evening.

V.

*Unanimously.* — The COURT are of OPINION, that the Admiral proceeded properly, upon Discovery of the *French* Fleet, to stand towards them.

*Thus far the Admiral's Conduct is justified, even in the Opinion of the Court; yet, by the two following Articles, that Conduct, which before is pronounced proper, upon the Whole, is now to be deemed improper in Part, for*

VI.

*Unanimously.* — It appears, that Major-General Stuart, Lord Effingham, and Colonel Cornwallis, with about Thirty Officers, and some Recruits, amounting in the Whole to about 100, belonging to the different Regiments in Garrison at St. Philip's, were on board the Ships of the Squadron.

VII.

12 Yeas for all the Officers; 1 for the General and Field Officers only.

The COURT are of OPINION, that as so great a Number of Officers were on board the Fleet, belonging to the Garrison of St. Philip's,



lip's, where they must necessarily be much wanted, the Admiral ought to have put them on board one of the Frigates he sent a-head, in order to have been landed, if found practicable; and if not landed before he saw the *French Fleet*, he ought to have left the Frigate to have endeavoured to land them, notwithstanding he did see the Enemy's Fleet.

*When the Fleet arrived off Minorca, were not several Ships dispersed? and was not the Admiral obliged to proportion his Sail, in order to enable the Ships, fallen a-stern during the Night, to rejoin him?—Were not the Officers belonging to the Garrison distributed throughout the different Ships of the Fleet; and could they be put on board any one of the Frigates at that Time, without some Hours Delay?—Would not this Delay have been inexcusable, when the whole Fleet was advancing with a fresh Gale of Wind, and fair for the Harbour?*

*But why were these Officers to be put on board the Frigate? What Circumstance then rendered this extraordinary Precaution necessary?—Was the Enemy in Sight?—Was their Appearance at that precise Point of Time to be expected?—If not, was not the British Fleet then advancing towards the Castle, as well as the Frigates; and if the latter found a Communication practicable, might not the Officers have been embarked on board one of them, in a very short Space of Time?—Could the Admiral, without the Letter he sent to General Blakeney had been landed, possibly know that the Fate of the Garrison depended on the instantaneous Disembarkation of a few Officers?—Or, when the Enemy's Fleet appeared steering towards ours, and was known to be superior to it, would not any Weakening of our Force have been a very injudicious, not to say a culpable, Measure; especially as the Fleet was badly manned, and*

*sickly?—Were not the Men belonging to the Frigates necessary; and were they not actually distributed to reinforce the Line of Battle Ships?—Was the Preservation of a Frigate, and such a Number of Officers of Rank, to claim no Part of the Admiral's Attention?—Would not his leaving them, (had any Accident happened) been held a kind of abandoning of them to the Enemy, who were then Masters of the Harbour? And might he not then have been exposed to that very Censure which he has now incurred for not doing it?—But, supposing the Judgment of the Court to be right, does it infer any thing more than that the Admiral's was wrong?—And yet, wrong as it may have been, it seems to have had its Abettors; since not a single Witness examined, to this Part of Mr. Byng's Conduct, but has avowed the Rectitude of it; and who, as Officers of equal Rank, Knowledge, and Experience, together with the additional Advantage of being on the Spot, may be deemed no indifferent, if not altogether as infallible Judges as those of the Court itself. Does not Mr. West say, that the Garrison of St. Philip's was to look on the English Fleet at that Time as its Protection, and that any Weakening the Force of that Protection would have been highly inexcusable?—Does not Lord Robert Bertie give it as his Opinion, That the 100 Officers and Recruits were of much more Service on board the Fleet, than they could have been in the Garrison, &c.?—As the Authority of Evidence appears to have had no Weight in forming this Opinion of the Court, it is to be presumed that of Reason was adopted in its stead; yet by what Principles of it Mr. Byng can be said—Not to have done his utmost to relieve St. Philip's Castle, only because he first endeavoured to destroy a Fleet destined to cover the Siege of it, is, I confess, to me somewhat inexplicable. This Resolution therefore amounts to no more*

*more than a mere Difference in Judgment between the Court and the Admiral, together with all his Officers, —and the Words of it—If found practicable, imply, that the Court were by no means satisfied, that the Landing of the inconsiderable Reinforcement then on board, actually was so.*

## VIII.

*Unanimously.*—It appears, that from the Time of first seeing the *French* Fleet in the Morning of the 19th of *May*, till our Fleet weathered the *French* about Noon the 20th, the Admiral took proper Measures to gain and keep the Wind of the Enemy, and to form and close the Line of Battle.

## IX.

*Unanimously.*—It appears, that the Van of our Fleet upon the Starboard Tack, stretched beyond the Rear of the Enemy's Fleet; and that our whole Fleet then tacked all together, by Signal; the Enemy's Fleet lying at the same Time to Leeward, in a Line of Battle a-head, on the Larboard Tack, under their Topsails, with their Maintopsails square.

## X.

*Unanimously.*—It appears, that immediately after our Fleet was about upon the Larboard Tack, our Rear was considerably farther to Windward of the Enemy's Rear, than our Van was of their Van.

## XI.

*Unanimously.*—The COURT are of OPINION, that when the *British* Fleet, on the Starboard Tack, were stretched a-breast, or about the Beam of the Enemy's Line, the Admiral should have tacked  
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the Fleet altogether, and immediately have conducted it on a direct Course for the Enemy; the Van steering for the Enemy's Van, the Rear for their Rear; each Ship for her opposite Ship in the Enemy's Line, and under such a Sail as might have enabled the worst sailing Ship, under all her plain Sail, to preserve her Station.

*As this Opinion is founded merely on a disputable Point of Discipline, with regard to the Propriety of disposing the Ships for the Attack, nothing criminal, at least, can be infered from it, unless every critical Deviation from the Judgment of the Court is to be held a Proof of wilful Guilt, and liable to the severest Penalties of it——It seems the Admiral's pretended Error (for no harder Term can his most sanguinary Opposers give it) consists, 1st, In suffering the Van of our Fleet to stretch beyond the Rear of the Enemy's. 2dly, In not tacking when the two Fleets were a-breast of each other, and bearing right down on the Enemy. And, 3dly, In not making all such Sail as would have enabled the worst sailing Ship (under all her plain Sail) to preserve her Station.——How consonant such a Conduct may be to any new System of our modern Disciplinarians, I will not pretend to say; but certain I am, that it is contrary to the Doctrine as well as Practice of every prudent, good, or great Officer I ever knew or have heard of; and indeed, who (tho' ever so little skilled in naval Knowledge) does not see the Propriety rather of approaching the Enemy with a Broadside than with the Stem only towards them, as the latter must inevitably subject your Ships to be raked; and probably render them disabled for Action before they can properly come into it.——Was not this even justified by the Event, in the very Engagement under Consideration; since the Intrepid, from being thus indiscreetly conduct-*  
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ed to *Action*, was disabled without being able to do her Antagonist any apparent Damage; to avoid this Inconvenience it was, that Mr. Byng very prudently stretch-  
ed beyond the Enemy's Rear before he tacked, that he might, by a slanting Course, place his Ships against those they were to engage with their Broadfides towards them, and which could only be effected by this Method; a Method the more unexceptionable as the French Fleet was laying to receive him.—Nor is this new Doctrine of engaging the Enemy, under a Croud of Sail, to be justified either by Authority or Experience. It was the invariable Rule of the brave Russell, and the able Rooke, never to hazard a Disorder on the Brink of *Action*, by crowding Sail, and making the Attack with Precipitation; especially when, as in this Case, the Enemy waited the Attack, and there was no Reason to apprehend they would avoid an Engagement.—Upon the Whole, whether the Admiral's System, or that of the Court, is most agreeable to true naval Discipline, I shall not be arrogant enough to determine; but will venture to pronounce, that neither has any Claim, that I know of, to Infallibility, for the Sanctification of their Doctrine. If Experience indeed may be thought of any Avail in this Case, the Advantage must be allowed the Admiral, as none of his Judges, that I ever heard of, have this to plead in Support of their superior Abilities for the proper Conduct of a Fleet.

## XII.

*Unanimously.*—It appears, that soon after the Fleet was upon the Larboard Tack, the Admiral made Signals for leading two Points to Starboard, which brought the Wind upon or abaft the Beam, and the Ships continued that Course, nearly a-head of each other, till the Admiral made the Signal for Battle.

## XIII.

XIII.

*Unanimously.*—It appears, that the Admiral made the Signal for Battle, about twenty Minutes after Two o'Clock.

XIV.

*Unanimously.*— It appears, that at the Time the Signal was made for Battle, the *French* Fleet were still lying to Leeward, with their Maintopsails square, as before-mentioned ; and that our Van was considerably nearer to their Van, than our Rear was to their Rear.

XV.

*Unanimously.*— It appears, that upon the Signal being made for Battle, the Ships of our Van Division bore down properly for the Ships opposed to them in the Enemy's Line, and engaged them, till the five headmost Ships of the Enemy went away to Leeward, out of Gun shot.

XVI.

*Unanimously.*— It appears, that the sternmost Ship of our Van Division, the *Intrepid*, having hauled up, and engaged about ten Minutes, or a Quarter of an Hour, lost her Foretopmast a little before Three o'Clock.

XVII.

*Unanimously.*— It appears, that the *Revenge*, the headmost Ship of the Rear Division bore down (after the Ships of the Van bore down) for the Ship opposed to her in the Enemy's Line ; and that she brought up

up upon the Weather Quarter of the *Intrepid*, upon the *Intrepid's* Foretopmast going away; and that she quickly afterwards, upon the *Intrepid's* setting her Foresail, bore down under the *Intrepid's* Lee Quarter, and brought up there.

## XVIII.

*Unanimously.* — It appears, that upon the Signal being made for Battle, and the Van putting before the Wind, the Admiral, in the *Ramillies*, edged away some Points; and the *Trident* and *Princess Louisa* thereby becoming to Windward of him, the Admiral thereupon haled up his Foresail, backed his Mizentopfail, and endeavoured to back his Maintopfail, to allow of their getting into their Stations, and continued in that Situation for five, six, or seven Minutes.

## XIX.

*Unanimously.* -- It is the OPINION of the COURT, that the Admiral, after the Signal was made for Battle, separated the Rear from the Van Division, and retarded the Rear Division of the *British* Fleet from closing with and engaging the Enemy, by his shortning Sail, by haling up his Foresail, backing his Mizentopfail, and backing or attempting to back his Maintopfail, in order that the *Trident* and *Princess Louisa* might get ahead again of the *Ramillies*.

## XX.

*Unanimously.* -- It is the OPINION of the COURT, that instead of shortening Sail, the Admiral ought to have made the *Trident's* and *Princess Louisa's*

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Signals to make more Sail ; and that he ought also to have set so much Sail himself, as would have enabled the *Culloden* (the worst sailing Ship in his Division) to have kept her Station with all her plain Sail set, in order to have got down, with as much Expedition as possible, to the Enemy, and thereby have properly supported the Van Division.

*I believe this is the first Instance of so fatal a Stress laid upon so inconsiderable a Space of Time : But would not the Candour and Ingenuity of this Opinion have appeared much more conspicuous, had the Disadvantages accruing from this pretended Error of the Admiral's been more particularly specified, viz. How far, by this means, the Rear of our Fleet was separated from the Van—and How long retarded from closing with, and engaging, the Enemy.—If our Fleet went (as appears by the Evidence it did) about two Knots and a half or three Knots an Hour, could this heinous Shortening of Sail (as the Ship was still under Way notwithstanding) be supposed to have lessened her Way much more than a Cable's Length, and as the Enemy's Ships were lying to receive the Attack, could any Inconvenience attend so momentary an Interruption ? But supposing the Admiral had made the Signal mentioned in the Resolution, and had kept on, must not he, considering the Shortness of the Run, have nearly closed the Revenge, during the Time the *Louisa* and *Trident* were making more Sail ; and how then were these Ships to get into their Stations, between the Revenge and the Admiral, without his then backing for them, and that for a much longer Time than was at first necessary ?—If He had not done this, what was to become of these two Ships, or was he to have attacked the Enemy's Line without them ? but surely the Court must have mistaken both the Time*  
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as well as Cause of this Separation and Retardment ; since, from the whole Scope of Evidence, it appears both were occasioned some time after, from the Revenge bringing too, by the Intrepid, instead of proceeding a-head and closing the Line, agreeable to the 24th Article of additional fighting Instructions, and agreeable to the Signal for the Line of Battle a-head, then flying, and which Impediment the Court, by the 25th Resolution, admits of—Tho' this is not the only one, yet, I must confess, it appears to me a striking Instance, how little Authority Evidence had in the Formation of the Court's Opinion ; since this damnatory Resolution is founded on the Testimony of a single Witness only, when twenty others have absolutely sworn, that the Admiral never once shortened Sail from the Time he bore away, till he was stopped by the Ships a-head of him backing and falling on his Bow. Surely when the Law of Evidence is disregarded, Judgment must become arbitrary, and Justice precarious.—But, as a Seaman, I cannot avoid making one Observation more on this extraordinary Article of Mr. Byng's Condemnation—If this supposed Separation was made on this Occasion, between our Van and Rear, who was properly chargeable with it ? —Not the Admiral surely.—Ought the Admiral to regulate his Motions by those of each particular Ship, or each particular Ship to regulate its Motions by those of the Admiral ? —When a Signal therefore for a Line, at half a Cable's Length distance, is flying, can an improper Separation be occasioned by any other means than by those Ships, either a-head or a-stern of the Admiral, not keeping the due Distance prescribed by the Signal ? Hence, must not such a Separation be imputable only to the Ships in the Van, which ought, according to all the Rules of Discipline, to have preserved the Distance appointed ? —Indeed, this is the first Time I ever heard an Admiral accused of being out of his Station in the

*Line ; for, as his Ship is supposed to be the Center, from which all Situation takes Place, the rest of the Ships may offend in Point of Station, with respect to the Admiral, but the Admiral never with respect to the rest of the Ships.—But it seems the Admiral should have made the Trident's and Princess Louisa's Signals to make more Sail ; yet, as this Interruption lasted only about six Minutes, would not the very making of these Signals have taken up near that Time, and then those Ships would have that to do, which, by the Admiral's Method, was already done. — Again, the Admiral should have set more Sail himself.—What additional Sail could he have carried?—Topgallant-sails, you will say. But were these ever held proper Sails, for an Admiral to carry, and to engage an Enemy under ? Or what Reason appeared to make them necessary, when the Enemy, superior in Force, and in perfect good Order, were waiting the Attack ?*

## XXI.

*Unanimously.*—It appears, that the Admiral after shortening Sail, as before-mentioned, again set his Foresail and filled his Topsails, and steered, with the Wind abaft the Beam, a slanting Course towards the Enemy, under that Sail, untill about 3 o'Clock ; when the People in the *Ramillies* began to fire without Orders, at too great a Distance for engaging ; but the Firing was continued by the Admiral's Directions.

## XXII.

*Unanimously.*—It appears, that some little time before this Firing began in the *Ramillies*, the *Princess Louisa* was seen from the *Ramillies*, flung up in the Wind with her Topsails shaking, and the  
*Trident*

*Trident* passing her to Leeward, the *Trident* being then a little upon the Weather Bow of the *Ramillies*; and that the *Revenge* had been also seen to bring to under the *Intrepid's* Lee-Quarter.

## XXIII.

*Unanimously.* — It appears, that when the Firing had been continued a little while in the *Ramillies*, an Alarm was given of a Ship being close under her Lee-Bow, imagined to be one of our Ships, and which proved to be the *Trident*; that, upon this Alarm, the Admiral immediately ordered the Helm to be put a Lee, the Forefail haled up, and the Topsails to be backed, and Firing to cease, till the Men should see *French* Colours, and made the Signal for the Fleet to brace to, the Rear to brace to first; in order that the Ships a-stern might not run on board him; but to prevent this Signal taking effect upon the Ships ahead, he ordered it to be haled down in a very few Minutes, and caused the Signal to be hoisted for the Fleet to fill and stand on, the Van to fill first.

## XXIV.

*Unanimously.* — It appears that the *Princess Louisa* was also seen, about the same time, with her Maintopsail shivering, or a-back, upon the Weather Bow of the *Ramillies*.

## XXV.

*Unanimously.* — The COURT are of OPINION, that while the *Ramillies* was firing, in going down, the *Trident*, and Ships immediately a-head of the *Ramillies*, proved an Impediment to the *Ramillies* continuing to go down.

## XXVI.

## XXVI.

*Unanimously.*—The COURT are of OPINION, that the Admiral acted wrong, in directing the Firing of the *Ramillies* to be continued before he had placed her at a proper Distance from the Enemy ; as he, thereby, not only threw away Shot uselessly, but occasioned a Smoke, which prevented his seeing the Motions of the Enemy, and the Position of the Ships immediately a-head of the *Ramillies*.

*Here, it seems, is an allowed Impediment to the Ramillies's continuing to go down ; and might not this be the Cause of that Separation and Retardment before-mentioned ? Nay, if the Authority of Evidence may be allowed to have any Weight against that of the Court, this actually was the Cause, and only Cause of them : Can then the Admiral be blameable for the Consequences of an Accident which did not depend upon him, or could possibly be foreseen or prevented by him ? — As to the Admiral's permitting the Fire of the Ramillies to be continued, surely no Seaman, acquainted with Action, can hesitate to pronounce it a prudent Measure under the Circumstances which then existed. — Was not the Admiral within half a Mile of the Enemy, when he permitted the Fire to be continued ? Though this may not be allowed to be within Point-blank, has it not, in many famous Sea-Actions, been looked upon as a proper Distance for Engaging, and called half Gun-shot ? — Might not the Smoke distress the Enemy in taking a deliberate and sure Aim at the Ramillies as she was bearing down ; and, by that Means, prevent her being disabled before she could get into close Action, which it appears the Admiral declared to be his Intention ? — As the Ship was then bearing down all the Time, did not she every Minute near her Opponent, and as the Shot*  
of



of the Enemy had for some Time reached, and passed over, the Ramillies, might not her Return of it damage the Enemy, especially in her Masts, Yards, and Rigging? Nay, did not this very Continuation of the Fire, criminal as it is censured to be, drive one of the French Ships out of the Line, after having brought down her Topsail-Yard? So that the only Damage, apparently done the Enemy's whole Fleet, was the Effect of this Fire, which by the Court is pronounced wrong, and to have thrown away his Majesty's Shot uselessly. —As to the Smoke of the Ramillies' preventing the Admiral's seeing the Position of the Ships immediately a-head of him; this is reasoning from the Event, no very fair Way of forming Conclusions.—Had those Ships kept their proper Stations, I presume there would have been no Occasion for the Admiral's so particular Observance of them: That they would fall out of their Stations, nothing less than Prescience could have enabled him to know; so that the Admiral should not have continued the Fire of the Ramillies, because the Smoke might possibly prevent his seeing an Accident which he could not possibly expect would happen. Excellent Logic!—Notable Cause of Crimination!

## XXVII.

*Unanimously.*—It appears, that shortly after the haling up of the Forefail, and backing the Topsails, all Firing ceased on board the Ramillies.

## XXVIII.

*Unanimously.*—It appears, that when the Smoke cleared up, upon the Ramillies ceasing to fire, the Center and Rear of the French Fleet had filled their Maintopsails, and set their Foresails.

## XXIX.

## XXIX.

*Unanimously.* — It appears, that the *French Center* and *Rear* stood on, and, as they came near the three then sternmost Ships of our Van, gave them their Fire; that some of their Shot fell short, and some did the *Defiance* Damage; and then the *French* edged away to join their own Van to Leeward.

## XXX.

*Unanimously.* — It appears, that from the Time the Admiral first haled up his Forefail, and backed his Topfails, to get clear of the *Trident*, to the Time of his filling his Topfails, and setting his Forefail again, was about twenty Minutes.

## XXXI.

*Unanimously* — It appears, that about the Time of the Admiral's filling, he made the Signal for the Rear of the Fleet to make more Sail, and close the Line; caused the *Princess Louisa* and *Trident* to be haled, to make sail into their Stations; and then setting his Mainfail, Jibb and Stayfails, passed to Leeward of the *Intrepid*; ordered the *Deptford* to take the *Intrepid's* Place in the Line, and the *Chesterfield* to take Care of the *Intrepid*; and standing on towards our Van, joined them a little after Five in the Evening.

## XXXII.

*Unanimously.* — The COURT are of OPINION, that after the Ships, which had received Damage in the Action, were as much refitted as Circumstances would permit, the Admiral ought to have returned with the Squadron off *St. Philip's*; and have  
endea-

endeavoured to open a Communication with that Castle ; and to have used every Means in his Power for its Relief, before he returned to Gibraltar.

*As the Subject of this Opinion is merely Matter of Judgment, it may not be improper to oppose Authority to Authority, and if, as has been before observed, the Commission, that constitutes the Court, is not supposed to confer Infallibility on the Members of it, it may still remain doubtful at least,—Whether the Admiral ought (after the Ships, which had received Damage in the Action, were as much refitted as Circumstances would permit) to have returned with the Squadron off St. Philip's ; but first, it may be asked, how was he to get there ?—Was not the French Fleet seen several Times lying between him and the Island ?—Had that Fleet, to Appearance, suffered any Diminution in its Force ?—Were not four Ships of ours rendered unfit for Action ?—Would it then have been prudent, with the Remnant of our Ships, to have re-attacked an Enemy, which was superior to the Whole ?—Was it proper to have proceeded again into Action with the Intrepid, which was obliged to be towed, under Jury-masts, to Gibraltar ?—Was not the Portland likewise, when arrived at that Place, reported unfit for Service, and could not be hove down there ? — But is the Admiral the only Person who differs with the Court in Opinion on this Occasion, and is not his Judgment authorized by the unanimous Concurrence of every Land and Sea Officer consulted upon it ?—Were not these Gentlemen equally qualified with the Court, to judge of the Propriety of the Proceedings, and did not their being on the Spot rather give them the Advantage in this Point over Gentlemen in the Harbour of Portsmouth ? — Does it not seem strange, that all Mention of the Council of War \*, held*

\* See Minutes of the Council of War, Appendix No. 3.

*on board the Ramillies, should be so carefully avoided in the Resolutions of the Court ! Were not the Minutes of it read on the Trial, and by that Means become Part of the Proceedings ?—Did the Court think itself in no Sort obliged to pay any Regard to the Contents of them ? But how indeed is it to be expected they should have any Weight, when it appears, that these Gentlemen have thought themselves at Liberty to set up their own private Opinion, in Opposition to the Authority of the united Evidence of every individual Witness, examined upon Oath to this Particular.*

## XXXIII.

*Unanimously.* — The COURT are of OPINION, that Admiral Byng did not do his utmost to relieve *St. Philip's Castle*, in the Island of *Minorca*, then besieged by the Forces of the *French King*.

## XXXIV.

*Unanimously.* — The COURT are of OPINION, that Admiral Byng, during the Engagement between his Majesty's Fleet, under his Command, and the Fleet of the *French King* on the 20th of *May* last, did not do his utmost to take, seize, and destroy the Ships of the *French King*, which it was his Duty to have engaged ; and to assist such of his Majesty's Ships, as were engaged in Fight with the *French Ships*, which it was his Duty to have assisted.

## XXXV.

*Unanimously.* — It appears, by the Evidence of Lord Robert Bertie, Lieutenant Colonel Smith, Capt. Gardiner, and by other Officers of the Ship, who were near the Person of the Admiral, that they did not perceive any Backwardness in the Admiral, during



ing the Action ; or any Marks of Fear or Confusion, either from his Countenance or Behaviour ; but that he seemed to give his Orders coolly and distinctly, and did not seem wanting in personal Courage.

## XXXVI.

*Unanimously Resolved*,— That the Admiral appears to fall under the following Part of the twelfth Article of the Articles of War; to wit, “ or shall  
“ not do his utmost to take, or destroy, every Ship  
“ which it shall be his Duty to engage, and to assist  
“ and relieve all and every of his Majesty’s Ships,  
“ which it shall be his Duty to assist and relieve.”

## XXXVII.

*Unanimously Resolved*,— As that Article positively prescribes Death, without any Alternative left to the Discretion of the Court, under any Variation of Circumstances, that he be adjudged to be shot to Death, at such Time, and on board such Ship, as the Lords Commissioners of the Admiralty shall direct : But as it appears by the Evidence of Lord *Robert Bertie*, Lieutenant Colonel *Smith*, Captain *Gardiner*, and other Officers of the Ship, who were near the Person of the Admiral, that they did not perceive any Backwardness in him, during the Action, or any Marks of Fear, or Confusion, either from his Countenance or Behaviour ; but that he seemed to give his Orders coolly and distinctly, and did not seem wanting in personal Courage ; and from other Circumstances, the Court do not believe that his Misconduct arose either from Cowardice or Disaffection ; and do therefore unanimously think it their Duty, most earnestly to recommend him as a proper Object of Mercy.

*As the whole Substance of these Resolutions depends on the following Words, viz. or shall not do his utmost, it may be sufficient to observe, that if so fatal a Stress is to be laid on this indeterminate Expression, as to enforce a Sentence against both Conscience and Justice, what Officer, let his Conduct be ever so unexceptionable, can hope to escape Capital Punishment, unless he is possessed of the comfortable Certainty, that the Opinion of his Judges, in point of Discipline, will fortunately coincide exactly with his own?—Is any other Crime to be collected from the whole of these Resolutions, than that Mr. BYNG and his Judges thought differently?—He may, if you believe them, have been injudicious; he cannot have been criminal; and tho' the Sentence \* condemns to the Penalty, I will venture to say, at the same time, it acquits of the Guilt; and indeed seems to amount to little more than a Remonstrance against the Severity (not to say Absurdity) of the Law, or a Declaration of the Court's Inability to interpret it.*

LET us now sum up the Total of Mr. Byng's Offences, as imputed to him by these Resolutions; and they will appear as follows:

#### RESOLUTION VII.

That the Admiral ought to have embarked the Officers belonging to the Garrison on board the Frigate he sent a-head, and, on Sight of the *French* Fleet, to have left the Frigate to endeavour to land them.

\* See the Sentence and Letter, Appendix No. 1, 2.

XI.

That the Admiral should not have stretched beyond the Enemy's Rear; but, when upon their Beam, to have tacked, and bore right down.

XIX.

That the Admiral should not have backed, to let the *Trident* and *Louisa* get into their Stations.

XXVI.

That the Admiral acted wrong in ordering the Fire of the *Ramillies* to be continued.

XXXII.

That the Admiral, after refitting his Ships as well as he could, should have returned off *St. Philip's*, and endeavoured to have opened a Communication with it.

Though a particular and, I flatter myself, a satisfactory Refutation has been offered to each of these Articles of Condemnation, yet even supposing them to stand in full Force against the Admiral, can any thing be reasonably inferred from them to his Prejudice, beyond the pardonable Frailty of human Judgment?—Where is the *Cowardice*, *Negligence*, and *Disaffection*, which the People have been tutored to demand, and the Law has been said to de-

nounce

nounce Death for?—If these are the penal Words contained in the Twelfth Article of War, let us ask,—Is not Mr. *Byng*, by his Sentence, declared innocent of Cowardice?—Yes.—Is he not declared innocent of Disaffection?—Yes.—Is he pronounced guilty of Negligence?—No.—How, then, *Gentlemen* can with any Consistence complain, that the *Severity* of this deathful Article (one penal Word of which they have not applied to the Prisoner in their Sentence) could oblige them, against their *Consciences*, to inflict the Penalty of it, I must leave to be explained by a Logic peculiar to so distinguishing a Tribunal.

If the Word *Negligence* is not expressed in the Resolutions it must either be implied, or not implied in them: if the former, how does the *Sentence* of the *Court* square with the *Conduct* of the *Admiral*? if the latter, how does the *Conduct* of the *Admiral* square with the *Sentence* of the *Court*?—But it seems, those magical Characters of the *Law*, SHALL NOT DO HIS UTMOST, were, what puzzled the *Equity* of the Martial Bench; yet shall Words, which of themselves are vague and *indeterminate*, be thought sufficient to *determine* the Death of a Subject?—Tho' the *Admiral* might *not do his utmost*, according to the *Court's* Idea, of Prudence and Discipline, he might still *do his utmost*, according to his *own* Ideas of them; and, supposing the latter to be the Case, is it consistent with Justice,



tice, that he should be punished for *not thinking* like his Judges?—These Words therefore can only criminate, as they relate to *willful Omission*, a Guilt not even pretended by the Sentence of the Court, or, I will venture to say, discoverable in any Part of the Conduct of the Admiral.

Should, then, this UNFORTUNATE GENTLEMAN experience the last Rigour of his Fate, let him still have the Consolation to think, that *Ignominy* is not always the Consequence of *Punishment*; and, what is almost singular, that his *Sentence* on his *Monument* would afford a *Record* of his *Innocence*; and only serve to furnish a *Trophy* to his Honour, while Posterity will scarcely be able to conceive how a COMMANDER

*Condemned*, though not *Convicted*,

*Justified*, yet not *Acquitted*,

Freed from the *Guilt*, yet, doom'd to the *Penalty*,

Of COWARDICE and DISAFFECTION;

Should,

Against the *Conscience* of his Judges,

Fall a VICTIM to so

PARADOXICAL a SENTENCE.

A P P E N -

## A P P E N D I X.

## No. I.

*At a Court Martial assembled on board His Majesty's Ship the St. George, in Portsmouth Harbour, upon the 28th of December, 1756; and held every Day afterwards, Sundays excepted, till the 27th of January, 1757, inclusive.*

## P R E S E N T.

*Thomas Smith, Esq; Vice Ad. of the Red, President.  
Francis Holburne, Esq; Rear Ad. of the Red.  
Harry Norris, Esq; Rear Ad. of the White.  
Thomas Brodrick, Esq; Rear Ad. of the Blue.*

<i>Capt. Charles Holmes.</i>	<i>Capt. Francis Geary,</i>
<i>William Boys.</i>	<i>John Moore.</i>
<i>John Simcoe.</i>	<i>James Douglas.</i>
<i>John Bentley.</i>	<i>Hon. Augustus Keppel.</i>
<i>Peter Dennis.</i>	

**T**HE Court, pursuant to an Order from the Lords Commissioners of the Admiralty, to Vice Admiral *Smith*, dated the 14th of *December*, 1756, proceeded to enquire into the Conduct of the Honorable *John Byng*, Admiral of the Blue Squadron of His Majesty's Fleet, and to try him upon a Charge, that during the Engagement between His Majesty's Fleet under his Command, and the Fleet of the *French King*, on the 20th of *May* last, he did withdraw or keep back, and did not do his utmost to take, seize and destroy the Ships of the *French King*, which it was his Duty to have engaged, and to assist such of His Majesty's Ships as were engaged

engaged in Fight with the *French* Ships, which it was his Duty to have assisted ; and for that he did not do his utmost to relieve St. *Philip's* Castle, in His Majesty's Island of *Minorca*, then besieged by the Forces of the *French* King ; but acted contrary to, and in Breach of His Majesty's Command : And having heard the Evidence, and the Prisoner's Defence, and very maturely and thoroughly considered the same ; they are unanimously of Opinion, That he did not do his utmost to relieve St. *Philip's* Castle ; and also, that during the Engagement between His Majesty's Fleet under his Command, and the Fleet of the *French* King, on the 20th of *May* last, he did not do his utmost to take, seize, and destroy the Ships of the *French* King, which it was his Duty to have engaged, and to assist such of his Majesty's Ships as were engaged in Fight with the *French* Ships, which it was his Duty to have assisted : And do therefore unanimously agree, that he falls under Part of the 12th Article of an Act of Parliament of the Twenty Second Year of His present Majesty, *For amending, explaining, and reducing into one Act of Parliament, the Laws relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea* : And as that Article positively prescribes Death, without any Alternative left to the Discretion of the Court, under any Variation of Circumstances ; the Court do therefore hereby unanimously adjudge the said Admiral *John Byng*, to be shot to Death, at such Time, and on board such Ship, as the Lords Commissioners of the Admiralty shall direct. But as it appears by the Evidence of Lord *Robert Bertie*, Lieutenant Colonel *Smith*, Captain *Gardiner*, and other Officers of the Ship, who were near the Person of the Admiral ; that they did not perceive any Backwardness in him during the Action, or any Marks of Fear or Confusion, either from his

Countenance or Behaviour; but that he seemed to give his Orders coolly and distinctly, and did not seem wanting in personal Courage; and from other Circumstances, the Court do not believe that his Misconduct arose either from Cowardice or Disaffection, and do therefore unanimously think it their Duty, most earnestly to recommend him as a proper Object of Mercy.

THO<sup>S</sup>. SMITH.  
FRA<sup>S</sup>. HOLBURNE.  
H. NORRIS.  
THO<sup>S</sup>. BRODRICK.  
CHA<sup>S</sup>. HOLMES.  
FRA<sup>S</sup>. GEARY.  
W. BOYS.  
JN<sup>O</sup>. MOORE.  
J. SIMCOE.  
JAMES DOUGLAS.  
J. BENTLEY.  
A. KEPPEL.  
PET. DENIS.

CHARLES FEARNE,  
*Judge Advocate.*

No. II.

*To the Right Honorable the Lords Commissioners for executing the Office of Lord High Admiral of Great Britain, &c.*

WE the underwritten, the President and Members of the Court Martial, assembled for the Tryal of Admiral Byng, believe it unnecessary to inform your Lordships, that in the whole Course of of this long Tryal, we have done our utmost Endeavours



deavours to come at Truths, and to do the strictest Justice to our Country and the Prisoner: But we cannot help laying the Distresses of our Minds before your Lordships, on this Occasion, in finding ourselves under a Necessity of condemning a Man to Death, from the great Severity of the 12th Article of War, Part of which he falls under, and which admits of no Mitigation, even if the Crime should be committed by an Error in Judgment only; and therefore, for our own Consciences sakes, as well as in Justice to the Prisoner, we pray your Lordships, in the most earnest Manner, to recommend him to His Majesty's Clemency.

*We are, my Lords, your Lordships  
most obedient and most  
humble Servants,*

*St. George, in Portsmouth  
Harbour, Jan. 27, 1757.*

THO. SMITH.  
FRA<sup>s</sup>. HOLBURN.  
H. NORRIS.  
THO<sup>s</sup>. BRODRICK.  
CHA<sup>s</sup>. HOLMES.  
FRA<sup>s</sup>. GEARY.  
W. BOYS.  
JN<sup>o</sup>. MOORE.  
J. SIMCOE.  
JAMES DOUGLAS.  
J. BENTLEY.  
A. KEPPEL.  
PET. DENNIS.

Nº III.

*At a Council of War assembled and held on board  
His Majesty's Ship Ramillies, at Sea, on  
Monday, the 24th of May, 1756.*

P R E S E N T.

The Honorable *John Byng*, Esq; Admiral of the Blue.  
Major General *Stuart*.  
*Temple West*, Esq; Rear Admiral of the Red.  
Captain *Henry Ward*.  
Captain *Phil. Durell*.  
Honorable *Edward Cornwallis*.  
Captain *James Young*.  
Captain *Charles Catford*.  
Captain *Frederick Cornwall*.  
Honorable *George Edgcumbe*.  
Captain *Will. Parry*.  
Captain *John Amberst*.  
Captain *Arthur Gardiner*.  
Right Honorable Earl of *Effingham*.  
Honorable *Aug. John Hervey*.  
Captain *William Lloyd*.  
Right Honorable Lord *Robert Bertie*.

HAVING laid before the Council of War the  
Opinion of the Engineers in Regard to throw-  
ing in Succours in the Castle of *St. Philip's*; the  
Result of a Council of War held by General *Fowke*  
at *Gibraltar*, with Regard to embarking a Detach-  
ment on board the Fleet; likewise Admiral *Byng's*  
Instructions

Instructions for his Proceedings in the *Mediterranean*; likewise the Order with Regard to the Disposal of the Regiment of *Fusiliers*, commanded by the Right Honorable Lord *Robert Bertie*; and the Defects of the Ships, which received Damage in Action with the *French* Squadron, the 20th Instant; as also having laid before the Council the State of the sick and wounded Men on board the Ships of the Fleet, proposed to the Council the following Questions, *viz.*

I. Whether an Attack upon the *French* Fleet gives any Prospect of relieving *Minorca*. } *Unanimously* resolved that it would not.

II. Whether, if there were no *French* Fleet cruising off *Minorca*, the *English* Fleet could raise the Siege? } *Unanimously* of Opinion that the Fleet could not.

III. Whether *Gibraltar* would not be in Danger by any Accident, that might befall this Fleet? } *Unanimously* agreed that it would be in Danger.

IV. Whether an Attack with our Fleet, in the present State of it, upon that of the *French*, will not endanger the Safety of *Gibraltar*, and expose the Trade of the *Mediterranean* to great Hazard? } *Unanimously* agreed that it would.

V. Whether

V. Whether it is not most } *We are unanimously*  
 for His Majesty's Service, } of Opinion that the  
 that the Fleet should im- } Fleet should imme-  
 mediately proceed for Gi- } diately proceed for  
*braltar?* } *Gibraltar.*

J. BYNG.

JAMES YOUNG.

JA<sup>S</sup>. STUART.

CHA<sup>S</sup>. CATFORD.

TEMPLE WEST.

FRED<sup>K</sup>. CORNWALL.

H<sup>V</sup>. WARD.

GEO. EDGCUMBE.

PHIL. DURELL.

W<sup>M</sup>. PARRY.

ED. CORNWALLIS.

JOHN AMHERST.

ARTHUR GARDINER.

EFFINGHAM.

A. HERVEY.

MICH<sup>L</sup>. EVERITT.

W<sup>M</sup>. LLOYD.

ROBT. BERTIE.

N. B. *This Council of War is taken no Notice of  
 in the Resolutions of the Court Martial.*

**F I N I S.**